

1-1 By: Lucio S.B. No. 492
 1-2 (In the Senate - Filed February 11, 2013; February 13, 2013,
 1-3 read first time and referred to Committee on Health and Human
 1-4 Services; March 26, 2013, reported adversely, with favorable
 1-5 Committee Substitute by the following vote: Yeas 8, Nays 0;
 1-6 March 26, 2013, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16			X	
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 492 By: Deuell

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the licensing and regulation of prescribed pediatric
 1-22 extended care centers; providing penalties; imposing fees.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Subtitle B, Title 4, Health and Safety Code, is
 1-25 amended by adding Chapter 248A to read as follows:

1-26 CHAPTER 248A. PRESCRIBED PEDIATRIC EXTENDED CARE CENTERS

1-27 SUBCHAPTER A. GENERAL PROVISIONS

1-28 Sec. 248A.001. DEFINITIONS. In this chapter:

1-29 (1) "Basic services" includes:

1-30 (A) the development, implementation, and
 1-31 monitoring of a comprehensive protocol of care that:

1-32 (i) is provided to a medically dependent or
 1-33 technologically dependent minor;

1-34 (ii) is developed in conjunction with the
 1-35 minor's parent or legal guardian; and

1-36 (iii) specifies the medical, nursing,
 1-37 psychosocial, therapeutic, and developmental services required by
 1-38 the minor served; and

1-39 (B) the caregiver training needs of the minor's
 1-40 parent or legal guardian.

1-41 (2) "Center" means a prescribed pediatric extended
 1-42 care center.

1-43 (3) "Commission" means the Health and Human Services
 1-44 Commission.

1-45 (4) "Commissioner" means the commissioner of aging and
 1-46 disability services.

1-47 (5) "Controlling person" has the meaning assigned by
 1-48 Section 248A.0012.

1-49 (6) "Department" means the Department of Aging and
 1-50 Disability Services.

1-51 (7) "Executive commissioner" means the executive
 1-52 commissioner of the commission.

1-53 (8) "Medically dependent or technologically dependent
 1-54 minor" means a minor who because of an acute, chronic, or
 1-55 intermittent medically complex or fragile condition or disability
 1-56 requires ongoing, technology-based skilled nursing supervision
 1-57 prescribed by the minor's physician to avert death or further
 1-58 disability or the routine use of a medical device to compensate for
 1-59 a deficit in a life-sustaining body function. The term does not
 1-60 include minor or occasional medical conditions that do not require

2-1 continuous nursing care, including asthma or diabetes, or a
 2-2 condition that requires an epinephrine injection.

2-3 (9) "Minor" means an individual younger than 21 years
 2-4 of age.

2-5 (10) "Prescribed pediatric extended care center"
 2-6 means a facility operated for profit or on a nonprofit basis that
 2-7 provides nonresidential basic services to four or more medically
 2-8 dependent or technologically dependent minors who require the
 2-9 services of the facility and who are not related by blood, marriage,
 2-10 or adoption to the owner or operator of the facility.

2-11 Sec. 248A.0012. CONTROLLING PERSON. (a) A person is a
 2-12 controlling person if the person has the ability, acting alone or in
 2-13 concert with others, to directly or indirectly influence, direct,
 2-14 or cause the direction of the management of, expenditure of money
 2-15 for, or policies of a center or other person.

2-16 (b) For purposes of this chapter, "controlling person"
 2-17 includes:

2-18 (1) a management company, landlord, or other business
 2-19 entity that operates or contracts with another person for the
 2-20 operation of a center;

2-21 (2) any person who is a controlling person of a
 2-22 management company or other business entity that operates a center
 2-23 or that contracts with another person for the operation of a center;
 2-24 and

2-25 (3) any other person who, because of a personal,
 2-26 familial, or other relationship with the owner, manager, landlord,
 2-27 tenant, or provider of a center, is in a position of actual control
 2-28 of or authority with respect to the center, regardless of whether
 2-29 the person is formally named as an owner, manager, director,
 2-30 officer, provider, consultant, contractor, or employee of the
 2-31 center.

2-32 (c) Notwithstanding any other provision of this section,
 2-33 for purposes of this chapter, a controlling person of a center or of
 2-34 a management company or other business entity described by
 2-35 Subsection (b)(1) that is a publicly traded corporation or is
 2-36 controlled by a publicly traded corporation means an officer or
 2-37 director of the corporation. The term does not include a
 2-38 shareholder or lender of the publicly traded corporation.

2-39 (d) A controlling person described by Subsection (b)(3)
 2-40 does not include a person, including an employee, lender, secured
 2-41 creditor, or landlord, who does not exercise any formal or actual
 2-42 influence or control over the operation of a center.

2-43 (e) The executive commissioner may adopt rules that define
 2-44 the ownership interests and other relationships that qualify a
 2-45 person as a controlling person under this section.

2-46 Sec. 248A.002. EXEMPTIONS. This chapter does not apply to:

2-47 (1) a facility operated by the United States
 2-48 government or a federal agency; or

2-49 (2) a health facility otherwise licensed under this
 2-50 subtitle.

2-51 Sec. 248A.003. CONFLICT WITH LOCAL LAWS. To the extent of
 2-52 any conflict between the standards adopted under this chapter and a
 2-53 standard required in a local, county, or municipal ordinance, this
 2-54 chapter controls.

2-55 SUBCHAPTER B. LICENSING OF CENTERS

2-56 Sec. 248A.051. LICENSE REQUIRED; PREMISES RESTRICTION.

2-57 (a) A person may not own or operate a prescribed pediatric
 2-58 extended care center in this state unless the person holds a license
 2-59 issued under this chapter.

2-60 (b) A separate license is required for each center located
 2-61 on separate premises, regardless of whether the centers are under
 2-62 the ownership or operation of the same person.

2-63 (c) A person may not operate a center on the same premises as
 2-64 a child-care facility licensed under Chapter 42, Human Resources
 2-65 Code.

2-66 Sec. 248A.052. APPLICATION; ISSUANCE. (a) An applicant
 2-67 for a prescribed pediatric extended care center license shall
 2-68 submit to the department in accordance with executive commissioner
 2-69 rules:

3-1 (1) a sworn application on the form prescribed by the
3-2 department;
3-3 (2) a letter of credit as prescribed by the department
3-4 to demonstrate the applicant's financial viability; and
3-5 (3) the required fees.
3-6 (b) The application must contain:
3-7 (1) the location of the premises of the center for
3-8 which the license is sought;
3-9 (2) documentation, signed by the appropriate local
3-10 government official, stating the location and use of the premises
3-11 meet local zoning requirements;
3-12 (3) the name, address, and social security number of,
3-13 and background and criminal history check information for:
3-14 (A) the applicant;
3-15 (B) the administrator responsible for daily
3-16 operations of the center;
3-17 (C) the financial officer responsible for
3-18 financial operations of the center; and
3-19 (D) each controlling person;
3-20 (4) the name, address, and federal employer
3-21 identification number or taxpayer identification number of the
3-22 applicant and of each controlling person, if the applicant or
3-23 controlling person is not an individual;
3-24 (5) the business name of the center;
3-25 (6) the maximum patient capacity requested for the
3-26 center; and
3-27 (7) a sworn affidavit that the applicant has complied
3-28 with this chapter and rules adopted under this chapter.
3-29 (c) The department shall issue a license to a center under
3-30 this chapter if the department determines that the applicant and
3-31 the center meet the requirements of this chapter and the rules and
3-32 standards adopted under this chapter. The license must include:
3-33 (1) the license holder's name;
3-34 (2) the location of the premises of the center; and
3-35 (3) a statement indicating the center provides
3-36 services to minors for 12 hours or less in a 24-hour period and does
3-37 not provide 24-hour care.
3-38 Sec. 248A.053. LICENSE TERM; RENEWAL; NOTIFICATION. (a) A
3-39 license issued under this chapter expires on the second anniversary
3-40 of the date of issuance.
3-41 (b) A person applying to renew a center license shall:
3-42 (1) submit a renewal application to the department on
3-43 the form prescribed by the department at least 60 days but not more
3-44 than 120 days before expiration of the license;
3-45 (2) submit the renewal fee in the amount required by
3-46 the department; and
3-47 (3) comply with any other requirements specified by
3-48 executive commissioner rule.
3-49 (c) The department shall assess a \$50 per day late fee to a
3-50 license holder who submits a renewal application after the date
3-51 required by Subsection (b)(1), except that the total amount of a
3-52 late fee may not exceed the lesser of 50 percent of the license
3-53 renewal fee or \$500.
3-54 (d) At least 120 days before expiration of a center license,
3-55 the department shall notify the owner or operator of the center of
3-56 the license expiration.
3-57 Sec. 248A.054. LICENSE NOT TRANSFERABLE OR ASSIGNABLE. A
3-58 license under this chapter is issued to the license holder named on
3-59 the license at the location of the premises listed on the license
3-60 and is not transferable or assignable.
3-61 SUBCHAPTER C. POWERS AND DUTIES OF
3-62 EXECUTIVE COMMISSIONER, COMMISSION, AND DEPARTMENT
3-63 Sec. 248A.101. ADOPTION OF RULES AND STANDARDS. (a) The
3-64 executive commissioner shall adopt rules necessary to implement
3-65 this chapter.
3-66 (b) To protect the health and safety of the public and
3-67 ensure the health, safety, and comfort of the minors served by a
3-68 center, the rules must establish minimum center standards,
3-69 including:

4-1 (1) standards relating to the issuance, renewal,
4-2 denial, suspension, probation, and revocation of a license to
4-3 operate a center;
4-4 (2) standards relating to the provision of
4-5 family-centered basic services that include individualized
4-6 medical, developmental, and family training services;
4-7 (3) based on the size of the building and the number of
4-8 minors served, building construction and renovation standards,
4-9 including standards for plumbing, electrical, glass, manufactured
4-10 buildings, accessibility for the physically disabled, and fire
4-11 protection;
4-12 (4) based on the size of the building and the number of
4-13 minors served, building maintenance conditions relating to
4-14 plumbing, heating, lighting, ventilation, adequate space, fire
4-15 protection, and other conditions;
4-16 (5) standards relating to the minimum number of and
4-17 qualifications required for personnel who provide personal care or
4-18 basic services to the minors served;
4-19 (6) standards relating to the sanitary conditions
4-20 within a center and its surroundings, including water supply,
4-21 sewage disposal, food handling, and general hygiene;
4-22 (7) standards relating to the programs offered by the
4-23 center to promote and maintain the health and development of the
4-24 minors served and to meet the training needs of the minors' parents
4-25 or legal guardians;
4-26 (8) standards relating to physician-prescribed
4-27 supportive or ancillary services;
4-28 (9) standards relating to transportation services;
4-29 and
4-30 (10) standards relating to maintenance of patient
4-31 medical records and program records in accordance with other law
4-32 and with accepted professional standards and practices.
4-33 (c) The executive commissioner by rule shall authorize the
4-34 commissioner to grant a waiver from compliance with standards
4-35 adopted under Subsection (b)(3), (4), or (6) to a center located in
4-36 a municipality that adopts a code to regulate any of those standards
4-37 if the commissioner determines the applicable municipal code
4-38 standards exceed the corresponding standards adopted under
4-39 Subsection (b)(3), (4), or (6).
4-40 Sec. 248A.102. INSPECTIONS; CORRECTIVE ACTION PLAN.
4-41 (a) The department may inspect a center, including its records, at
4-42 reasonable times as necessary to ensure compliance with this
4-43 chapter and the rules adopted under this chapter. The center shall
4-44 provide the department with access to all center records.
4-45 (b) The department shall inspect a center before issuing or
4-46 renewing a license under this chapter.
4-47 (c) The department may require a center that undergoes an
4-48 inspection to:
4-49 (1) take appropriate corrective action necessary to
4-50 comply with the requirements of this chapter and rules adopted
4-51 under this chapter; and
4-52 (2) submit a corrective action plan to the department
4-53 for approval.
4-54 (d) A center shall make available to any person on request a
4-55 copy of each inspection report pertaining to the center that has
4-56 been issued by the department. Before making an inspection report
4-57 available under this subsection, the center shall redact from the
4-58 report any information that is confidential under other law.
4-59 Sec. 248A.103. FEES. (a) The executive commissioner shall
4-60 set fees imposed by this chapter in amounts reasonable and
4-61 necessary to cover the cost of administering this chapter.
4-62 (b) A fee collected under this chapter shall be deposited in
4-63 the state treasury to the credit of the general revenue fund and
4-64 shall be appropriated to the department to administer and enforce
4-65 this chapter.
4-66 (c) A fee collected under this chapter is nonrefundable.
4-67 Sec. 248A.104. COMMISSION DUTIES. The commission shall
4-68 designate a center licensed under this chapter as a health care
4-69 services provider under the medical assistance program established

5-1 under Chapter 32, Human Resources Code.

5-2 SUBCHAPTER D. CENTER REGULATION

5-3 Sec. 248A.151. ADMISSION CRITERIA FOR MINOR CLIENT. A
 5-4 center may not admit a minor client to the center unless:

5-5 (1) the client is a medically dependent or
 5-6 technologically dependent minor;

5-7 (2) the minor's prescribing physician issues a
 5-8 prescription ordering care at a center;

5-9 (3) the minor's parent or legal guardian consents to
 5-10 the minor's admission to the center; and

5-11 (4) the admission is voluntary based on the parent's or
 5-12 legal guardian's preference in both managed care and non-managed
 5-13 care service delivery systems.

5-14 Sec. 248A.152. RESTRICTIONS ON HOURS, SERVICES, AND PATIENT
 5-15 CAPACITY. (a) A center may not provide services to a minor for
 5-16 more than 12 hours in any 24-hour period.

5-17 (b) A center may not provide services other than services
 5-18 regulated under this chapter and executive commissioner rule.

5-19 (c) The maximum patient capacity at a center may not exceed
 5-20 60.

5-21 Sec. 248A.153. LICENSE DISPLAY. Each center licensed under
 5-22 this chapter shall display the center's license in a conspicuous
 5-23 location readily visible to a person entering the center.

5-24 Sec. 248A.154. MAINTENANCE OF RECORDS. Each center shall
 5-25 maintain at the center the medical and other records required by
 5-26 this chapter and by rules adopted under this chapter.

5-27 Sec. 248A.155. COMPLAINTS. A person may file a complaint
 5-28 with the department against a center licensed or required to be
 5-29 licensed under this chapter. The department shall investigate the
 5-30 complaint in accordance with the complaint procedures established
 5-31 under Chapter 1001.

5-32 Sec. 248A.156. COMPLIANCE WITH OTHER LAW. (a) A center
 5-33 shall comply with Chapter 260A and rules adopted under that
 5-34 chapter.

5-35 (b) An owner, center employee, or other person subject to
 5-36 Chapter 260A shall comply with that chapter and rules adopted under
 5-37 that chapter.

5-38 Sec. 248A.157. CLOSING OF CENTER. At least 30 days before
 5-39 the date a center voluntarily discontinues operation, the owner or
 5-40 operator of the center shall inform the parent or legal guardian of
 5-41 each minor client to whom the center is providing services of:

5-42 (1) the discontinuance; and

5-43 (2) the proposed time of the discontinuance.

5-44 SUBCHAPTER E. GENERAL ENFORCEMENT

5-45 Sec. 248A.201. DENIAL, SUSPENSION, OR REVOCATION OF
 5-46 LICENSE. (a) The department may deny, suspend, or revoke a
 5-47 license issued under this chapter for:

5-48 (1) a violation of this chapter or a rule or standard
 5-49 adopted under this chapter;

5-50 (2) an intentional or negligent act by the center or an
 5-51 employee of the center that the department determines significantly
 5-52 affects the health or safety of a minor served by the center;

5-53 (3) use of drugs or intoxicating liquors to an extent
 5-54 that affects the license holder's or applicant's professional
 5-55 competence;

5-56 (4) a felony conviction, including a finding or
 5-57 verdict of guilty, an admission of guilt, or a plea of nolo
 5-58 contendere, in this state or in any other state of any person
 5-59 required to undergo a background and criminal history check under
 5-60 this chapter;

5-61 (5) fraudulent acts, including acts relating to
 5-62 Medicaid fraud and obtaining or attempting to obtain a license by
 5-63 fraud or deception; or

5-64 (6) a license revocation, suspension, or other
 5-65 disciplinary action taken against the license holder or any person
 5-66 listed in the application in another state.

5-67 (b) Except as provided by Section 248A.203, the procedures
 5-68 by which the department denies, suspends, or revokes a license and
 5-69 by which those actions are appealed are governed by the procedures

6-1 for a contested case hearing under Chapter 2001, Government Code.

6-2 Sec. 248A.202. PROBATION. (a) If the department finds
 6-3 that a center is in repeated noncompliance with this chapter, rules
 6-4 adopted under this chapter, or a corrective action plan, but that
 6-5 the noncompliance does not endanger a minor served by the center or
 6-6 the public health and safety, the department may schedule the
 6-7 center for probation rather than suspending or revoking the
 6-8 center's license.

6-9 (b) The department shall provide notice to the center of the
 6-10 probation and of the items of noncompliance not later than the 10th
 6-11 day before the date the probation period begins.

6-12 (c) The department shall designate a period of not less than
 6-13 30 days during which the center will remain under probation. During
 6-14 the probation period, the center must correct the items that were in
 6-15 noncompliance and report the corrections to the department for
 6-16 approval.

6-17 (d) The department may suspend or revoke the license of a
 6-18 center that does not correct items that were in noncompliance or
 6-19 does not comply with this chapter or the rules adopted under this
 6-20 chapter within the applicable probation period.

6-21 Sec. 248A.203. EMERGENCY SUSPENSION. (a) The department
 6-22 may issue an emergency order to suspend a license issued under this
 6-23 chapter if the department has reasonable cause to believe that the
 6-24 conduct of a license holder creates an immediate danger to a minor
 6-25 served by the center or the public health and safety. An emergency
 6-26 suspension is effective immediately without a hearing on notice to
 6-27 the license holder.

6-28 (b) On written request of the license holder, the department
 6-29 shall conduct a hearing not earlier than the 10th day or later than
 6-30 the 30th day after the date the hearing request is received to
 6-31 determine if the emergency suspension is to be continued, modified,
 6-32 or rescinded.

6-33 (c) The hearing and any appeal are governed by the
 6-34 department's rules for a contested case hearing and by Chapter
 6-35 2001, Government Code.

6-36 Sec. 248A.204. INJUNCTION. (a) The department may
 6-37 petition a district court for a temporary restraining order to
 6-38 restrain a continuing violation of this chapter or a rule or
 6-39 standard adopted under this chapter if the department finds that
 6-40 the violation creates an immediate threat to the health and safety
 6-41 of the minors served by a center.

6-42 (b) A district court, on petition of the department and on a
 6-43 finding by the court that a person is violating this chapter or the
 6-44 rules adopted under this chapter, may by injunction:

6-45 (1) prohibit the person from continuing the violation;

6-46 (2) restrain or prevent the establishment or operation
 6-47 of a center without a license issued under this chapter; or

6-48 (3) grant any other injunctive relief warranted by the
 6-49 facts.

6-50 (c) The attorney general may institute and conduct a suit
 6-51 authorized by this section at the request of the department. The
 6-52 attorney general and the department may recover reasonable expenses
 6-53 incurred in obtaining relief under this section, including court
 6-54 costs, reasonable attorney's fees, investigation costs, witness
 6-55 fees, and deposition expenses.

6-56 (d) Venue for a suit brought under this section is in the
 6-57 county in which the center is located or in Travis County.

6-58 Sec. 248A.205. CIVIL PENALTY. (a) A person who violates
 6-59 this chapter or a rule or standard adopted under this chapter or who
 6-60 fails to comply with a corrective action plan submitted under this
 6-61 chapter is liable for a civil penalty of not more than \$500 for each
 6-62 violation if the department determines the violation threatens the
 6-63 health and safety of a minor served by the center.

6-64 (b) Each day a violation continues constitutes a separate
 6-65 violation for the purposes of this section.

6-66 (c) The attorney general may sue to collect the penalty.
 6-67 The attorney general and the department may recover reasonable
 6-68 expenses incurred in obtaining relief under this section, including
 6-69 court costs, reasonable attorney's fees, investigation costs,

7-1 witness fees, and deposition expenses.

7-2 (d) All penalties collected under this section shall be
7-3 deposited in the state treasury in the general revenue fund.

7-4 Sec. 248A.206. CRIMINAL PENALTY. (a) A person commits an
7-5 offense if the person knowingly establishes or operates a center
7-6 without the appropriate license issued under this chapter.

7-7 (b) An offense under this section is a Class B misdemeanor.

7-8 (c) Each day a violation continues constitutes a separate
7-9 offense.

7-10 SUBCHAPTER F. ADMINISTRATIVE PENALTY

7-11 Sec. 248A.251. IMPOSITION OF PENALTY. The commissioner may
7-12 impose an administrative penalty on a person licensed under this
7-13 chapter who violates this chapter or a rule or standard adopted or
7-14 order issued under this chapter.

7-15 Sec. 248A.252. AMOUNT OF PENALTY. (a) The amount of the
7-16 penalty may not exceed \$500 for each violation, and each day a
7-17 violation continues or occurs is a separate violation for purposes
7-18 of imposing a penalty.

7-19 (b) The amount shall be based on:

7-20 (1) the seriousness of the violation, including the
7-21 nature, circumstances, extent, and gravity of the violation;

7-22 (2) the threat to health or safety caused by the
7-23 violation;

7-24 (3) any previous violations;

7-25 (4) the amount necessary to deter a future violation;

7-26 (5) the efforts made by the violator to correct the
7-27 violation; and

7-28 (6) any other matter that justice may require.

7-29 Sec. 248A.253. REPORT AND NOTICE OF VIOLATION AND PENALTY.

7-30 (a) If the department initially determines that a violation
7-31 occurred, the department shall give written notice of the report to
7-32 the person.

7-33 (b) The notice must:

7-34 (1) include a brief summary of the alleged violation;

7-35 (2) state the amount of the recommended penalty; and

7-36 (3) inform the person of the person's right to a
7-37 hearing on the occurrence of the violation, the amount of the
7-38 penalty, or both.

7-39 Sec. 248A.254. PENALTY TO BE PAID OR HEARING REQUESTED.

7-40 (a) Not later than the 20th day after the date the person receives
7-41 the notice sent under Section 248A.253, the person in writing may:

7-42 (1) accept the determination and recommended penalty
7-43 of the department; or

7-44 (2) make a request for a hearing on the occurrence of
7-45 the violation, the amount of the penalty, or both.

7-46 (b) If the person accepts the determination and recommended
7-47 penalty or if the person fails to respond to the notice, the
7-48 commissioner by order shall approve the determination and impose
7-49 the recommended penalty.

7-50 Sec. 248A.255. HEARING. (a) If the person requests a
7-51 hearing, the commissioner shall refer the matter to the State
7-52 Office of Administrative Hearings, which shall promptly set a
7-53 hearing date and give written notice of the time and place of the
7-54 hearing to the person. An administrative law judge of the State
7-55 Office of Administrative Hearings shall conduct the hearing.

7-56 (b) The administrative law judge shall make findings of fact
7-57 and conclusions of law and promptly issue to the commissioner a
7-58 proposal for a decision about the occurrence of the violation and
7-59 the amount of a proposed penalty.

7-60 Sec. 248A.256. DECISION BY COMMISSIONER. (a) Based on the
7-61 findings of fact, conclusions of law, and proposal for a decision,
7-62 the commissioner by order may:

7-63 (1) find that a violation occurred and impose a
7-64 penalty; or

7-65 (2) find that a violation did not occur.

7-66 (b) The notice of the commissioner's order under Subsection
7-67 (a) that is sent to the person in accordance with Chapter 2001,
7-68 Government Code, must include a statement of the right of the person
7-69 to judicial review of the order.

8-1 Sec. 248A.257. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.
 8-2 Not later than the 30th day after the date the order of the
 8-3 commissioner imposing an administrative penalty under Section
 8-4 248A.256 becomes final, the person shall:

8-5 (1) pay the penalty; or
 8-6 (2) file a petition for judicial review of the
 8-7 commissioner's order contesting the occurrence of the violation,
 8-8 the amount of the penalty, or both.

8-9 Sec. 248A.258. STAY OF ENFORCEMENT OF PENALTY. (a) Within
 8-10 the period prescribed by Section 248A.257, a person who files a
 8-11 petition for judicial review may:

8-12 (1) stay enforcement of the penalty by:
 8-13 (A) paying the penalty to the court for placement
 8-14 in an escrow account in the court registry; or
 8-15 (B) giving the court a supersedeas bond approved
 8-16 by the court that:
 8-17 (i) is for the amount of the penalty; and
 8-18 (ii) is effective until all judicial review
 8-19 of the commissioner's order is final; or

8-20 (2) request the court to stay enforcement of the
 8-21 penalty by:
 8-22 (A) filing with the court a sworn affidavit of
 8-23 the person stating that the person is financially unable to pay the
 8-24 penalty and is financially unable to give the supersedeas bond; and
 8-25 (B) sending a copy of the affidavit to the
 8-26 commissioner by certified mail.

8-27 (b) If the commissioner receives a copy of an affidavit
 8-28 under Subsection (a)(2), the commissioner may file with the court,
 8-29 not later than the fifth day after the date the copy is received, a
 8-30 contest to the affidavit. The court shall hold a hearing on the
 8-31 facts alleged in the affidavit as soon as practicable and shall stay
 8-32 the enforcement of the penalty on finding that the alleged facts are
 8-33 true. The person who files an affidavit has the burden of proving
 8-34 that the person is financially unable to pay the penalty and to give
 8-35 a supersedeas bond.

8-36 Sec. 248A.259. COLLECTION OF PENALTY. (a) If the person
 8-37 does not pay the penalty and the enforcement of the penalty is not
 8-38 stayed, the penalty may be collected.

8-39 (b) The attorney general may sue to collect the penalty and
 8-40 may recover reasonable expenses, including attorney's fees,
 8-41 incurred in recovering the penalty.

8-42 (c) A penalty collected under this subchapter shall be
 8-43 deposited in the state treasury in the general revenue fund.

8-44 Sec. 248A.260. DECISION BY COURT. (a) If the court
 8-45 sustains the finding that a violation occurred, the court may
 8-46 uphold or reduce the amount of the penalty and order the person to
 8-47 pay the full or reduced amount of the penalty.

8-48 (b) If the court does not sustain the finding that a
 8-49 violation occurred, the court shall order that a penalty is not
 8-50 owed.

8-51 Sec. 248A.261. REMITTANCE OF PENALTY AND INTEREST. (a) If
 8-52 the person paid the penalty and if the amount of the penalty is
 8-53 reduced or the penalty is not upheld by the court, the court shall
 8-54 order, when the court's judgment becomes final, that the
 8-55 appropriate amount plus accrued interest be remitted to the person
 8-56 not later than the 30th day after the date the judgment of the court
 8-57 becomes final.

8-58 (b) The interest accrues at the rate charged on loans to
 8-59 depository institutions by the New York Federal Reserve Bank.

8-60 (c) The interest shall be paid for the period beginning on
 8-61 the date the penalty is paid and ending on the date the penalty is
 8-62 remitted.

8-63 Sec. 248A.262. RELEASE OF BOND. (a) If the person gave a
 8-64 supersedeas bond and the penalty is not upheld by the court, the
 8-65 court shall order, when the court's judgment becomes final, the
 8-66 release of the bond.

8-67 (b) If the person gave a supersedeas bond and the amount of
 8-68 the penalty is reduced, the court shall order the release of the
 8-69 bond after the person pays the reduced amount.

9-1 Sec. 248A.263. ADMINISTRATIVE PROCEDURE. A proceeding to
9-2 impose the penalty is considered to be a contested case under
9-3 Chapter 2001, Government Code.

9-4 SECTION 2. Subchapter F, Chapter 411, Government Code, is
9-5 amended by adding Section 411.13861 to read as follows:

9-6 Sec. 411.13861. ACCESS TO CRIMINAL HISTORY RECORD
9-7 INFORMATION: DEPARTMENT OF AGING AND DISABILITY SERVICES.

9-8 (a) The Department of Aging and Disability Services shall obtain
9-9 from the Department of Public Safety criminal history record
9-10 information maintained by the Department of Public Safety that
9-11 relates to a person required to undergo a background and criminal
9-12 history check under Chapter 248A, Health and Safety Code.

9-13 (b) Criminal history record information obtained under
9-14 Subsection (a) is for the exclusive use of the Department of Aging
9-15 and Disability Services and is privileged and confidential.

9-16 (c) Criminal history record information obtained under
9-17 Subsection (a) may not be released or disclosed to any person or
9-18 agency except on court order or with the consent of the person who
9-19 is the subject of the information. The Department of Aging and
9-20 Disability Services may destroy the criminal history record
9-21 information after the information is used for the purposes
9-22 authorized by this section.

9-23 (d) This section does not prohibit the Department of Aging
9-24 and Disability Services from obtaining and using criminal history
9-25 record information as provided by other law.

9-26 SECTION 3. Subdivision (3), Section 250.001, Health and
9-27 Safety Code, is amended to read as follows:

9-28 (3) "Facility" means:

9-29 (A) a nursing home, custodial care home, or other
9-30 institution licensed by the Department of Aging and Disability
9-31 Services under Chapter 242;

9-32 (B) an assisted living facility licensed by the
9-33 Department of Aging and Disability Services under Chapter 247;

9-34 (C) a home and community support services agency
9-35 licensed under Chapter 142;

9-36 (D) an adult day care facility licensed by the
9-37 Department of Aging and Disability Services under Chapter 103,
9-38 Human Resources Code;

9-39 (E) a facility for persons with mental
9-40 retardation licensed under Chapter 252;

9-41 (F) an adult foster care provider that contracts
9-42 with the Department of Aging and Disability Services;

9-43 (G) a facility that provides mental health
9-44 services and that is operated by or contracts with the Department of
9-45 State Health Services;

9-46 (H) a local mental health or mental retardation
9-47 authority designated under Section 533.035;

9-48 (I) a person exempt from licensing under Section
9-49 142.003(a)(19); ~~or~~

9-50 (J) a special care facility licensed by the
9-51 Department of State Health Services under Chapter 248; or

9-52 (K) a prescribed pediatric extended care center
9-53 licensed by the Department of Aging and Disability Services under
9-54 Chapter 248A.

9-55 SECTION 4. Subdivision (4), Section 253.001, Health and
9-56 Safety Code, is amended to read as follows:

9-57 (4) "Facility" means:

9-58 (A) a facility:
9-59 (i) licensed by the department; or
9-60 (ii) licensed under Chapter 252;

9-61 (B) an adult foster care provider that contracts
9-62 with the department; ~~or~~

9-63 (C) a home and community support services agency
9-64 licensed by the department under Chapter 142; or

9-65 (D) a prescribed pediatric extended care center
9-66 licensed under Chapter 248A.

9-67 SECTION 5. Subdivisions (5) and (7), Section 260A.001,
9-68 Health and Safety Code, are amended to read as follows:

9-69 (5) "Facility" means:

10-1 (A) an institution as that term is defined by
10-2 Section 242.002; ~~and~~

10-3 (B) an assisted living facility as that term is
10-4 defined by Section 247.002; and

10-5 (C) a prescribed pediatric extended care center
10-6 as that term is defined by Section 248A.001.

10-7 (7) "Resident" means an individual, including a
10-8 patient, who resides in or receives services from a facility.

10-9 SECTION 6. Section 32.024, Human Resources Code, is amended
10-10 by adding Subsection (jj) to read as follows:

10-11 (jj) The department shall establish a separate provider
10-12 type for prescribed pediatric extended care centers licensed under
10-13 Chapter 248A, Health and Safety Code, for purposes of enrollment as
10-14 a provider for and reimbursement under the medical assistance
10-15 program.

10-16 SECTION 7. If before implementing any provision of this Act
10-17 a state agency determines that a waiver or authorization from a
10-18 federal agency is necessary for implementation of that provision,
10-19 the agency affected by the provision shall request the waiver or
10-20 authorization and may delay implementing that provision until the
10-21 waiver or authorization is granted.

10-22 SECTION 8. (a) Not later than July 1, 2014, the executive
10-23 commissioner of the Health and Human Services Commission shall
10-24 adopt the rules required by Subchapter C, Chapter 248A, Health and
10-25 Safety Code, as added by this Act.

10-26 (b) Notwithstanding Section 248A.051, Health and Safety
10-27 Code, as added by this Act, a person is not required to hold a
10-28 prescribed pediatric extended care center license until January 1,
10-29 2015.

10-30 SECTION 9. (a) Except as provided by Subsection (b) of
10-31 this section, this Act takes effect September 1, 2013.

10-32 (b) Subchapters E and F, Chapter 248A, Health and Safety
10-33 Code, as added by this Act, take effect January 1, 2015.

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